ORISSA HIGH COURT,
CUTTACK

JAIL CRIMINAL APPEAL NO. 72 OF 1997

From the judgment dated 29.03.1997 passed by Sri L.K.Mishra, Sessions Judge, Koraput,Jeypore/Malkangiri at Jeypore in Sessions Case No.150 of 1996.

Mana Madi ……

Appellant

Versus

State of Orissa …… Respondent

For Appellant - M/s V.Pruthviraj, S.Jena and S.Patnaik

For Respondent - Mr. Patitapaban Panda, Addl. Govt. Advocate

PRESENT:-

THE HON'BLE MR. JUSTICE P.K.TRIPATHY
AND
THE HON'BLE MR. JUSTICE PRADIP MOHANTY

Date of hearing and judgment : 11.10.2006

Heard. The judgment is as follows.

2. Appellant challenges the order of his conviction under Section 302 IPC and sentence of imprisonment for life imposed by learned Sessions Judge, Koraput, Jeypore/Malkangiri in Sessions Case No.150 of 1996 which was disposed of on 29.03.1997.

3. It reveals from the record and the facts noted in the impugned judgment that on 29.01.1996 at about 10 a.m. when the deceased with his wife Rami Podiami (P.W.1) and daughter Debe Padiami (P.W.2) were at their Ladi (an open shed) near his field and the deceased was engaged in roasting a bird beneath a Kusum tree near that Ladi, accused arrived there and picked up a heavy split of wood from the log fire, gave two blows to the head of the deceased and ran away from the spot after throwing that weapon of offence. The deceased fell down sustaining bleeding injuries on the head. The villagers arrived there and thereafter P.W.5- the son of the deceased was intimated, who arranged a Taxi and while carrying the deceased to Malkanagiri hospital, on the way he succumbed to the injuries. P.W.5 brought back the dead body and kept it under the said Ladi. Local police was informed and law was set into motion. After routine investigation, the Officer in-charge of Kalimela police station (P.W.8) submitted charge-sheet. When charge for the offence under Section 302 IPC was framed, accused pleaded not guilty and claimed for trial. In course of the trial, prosecution relied on the evidence of eight witnesses and the documents marked Exts.1 to 11, out of which Ext.5 is the post mortem report proved by Dr. A.K. Mishra (P.W.7). M.O.I is the split wood, the weapon of offence. Accused did not adduce any defence evidence in support of his plea of denial.

4. On assessment of the evidence of P.W.7, the trial court recorded a categorical finding that the two bruises; one on the right side of the forehead just above the eyebrow and the second on the right side of face just behind the canthus of eye with corresponding internal injuries are sufficient in ordinary course of nature to cause death of the deceased and therefore the deceased suffered a homicidal death. That evidence of P.W.7 and the findings of the court below are not under challenge before us. Notwithstanding that, on re-appreciation of the evidence on record and the findings recorded by the trial court, we do not find anything to interfere with the conclusion of

the trial court regarding homicidal death of the deceased. That finding of the trial court is thus approved.

5. P.Ws.1 and 2, respectively the widow and the daughter of the deceased were the two eye witnesses to the occurrence. P.W.1 in her examination-in-chief supported the prosecution, but in cross-examination she stated that she was under the Ladi at the time of occurrence. There were walls around the Ladi and bushes in between the Ladi and the tree under which the deceased was sitting and that the spot of occurrence was not visible from the Ladi. On the other hand, P.W.2 both in her examination-in-chief as well as in the cross-examination stood firm on her answer that there was no wall fixed to the four sides of the Ladi because it was an open shed and the place of occurrence under the Kusum tree is very nearer to that Ladi and that the occurrence was visible from the Ladi. Posted with such contradicting evidence of P.Ws.1 and 2, learned Sessions Judge wisely made assessment of evidence of both the witnesses together with spot visit report of P.W.8 and the evidence adduced by him in course of the trial and found that the evidence of P.W.1 in her cross-examination has rendered her version untrustworthy. Accordingly, evidence of P.W.1 was discarded and evidence of P.W.2 was accepted to record the finding that appellant is the author of the injuries, which resulted in homicidal death of the deceased.

6. Learned counsel for the appellant argues that the reasoning assigned by the trial court in rejecting the evidence of P.W.1 is not correct inasmuch as P.W.1 is no other than the widow of the deceased and she could not have a motive to protect the accused. We have gone through reasons assigned by the trial court to not to accept evidence of P.W.1 being contradictory to evidence of P.Ws.2 and 8 and as against the actual state of structure of a shade (Ladi). At the time of recording of evidence, as we feel, if the trial court would have been little careful to ascertain if the illiterate adivasi woman (P.W.1) was capable of understanding the question put in the cross-examination

before giving her answer, such a situation perhaps would not have occurred by which P.W.1 contradicted her evidence in examination-in-chief. Therefore, we find that the trial court was right in rejecting the evidence of P.W.1. So far as the evidence of P.W.2 is concerned, it is clear and clinching against the accused as the author of injuries, which resulted in death of the deceased. We do not find any illegality having been committed by the trial court nor do we find any clue from the evidence of P.W.2 to grant any advantage to the accused.

7. Learned counsel for the appellant further argues that no motive has been attributed to the accused for committing such a heinous crime. According to him, evidence of P.W.2 indicates that there was no enmity between the accused and the deceased and therefore it is hard to believe that such motiveless crime could be committed by the accused. Motive may be a good ground for finding out the nature of the offence committed, but absence of proof of motive in all cases may not be a ground to discard a proved fact of homicidal death. Therefore, in this case, absence of proof of motive does not enure to the benefit of the accused.

8. Learned counsel for the appellant further submits that keeping in view that a single blow was given and there was absence of enmity, the conviction for the offence under Section 302 IPC be modified to one under Section 304 Part II IPC. We are unable to agree with such an argument inasmuch as in all cases, the case of single blow need not result in conviction for the offence of culpable homicide not amounting to murder. Provision of law embodied in Section 300 IPC, which distinguishes the offence of murder and culpable homicide not amounting to murder, has to be borne in mind while recording a conviction. Apart from that, this is not a case of single blow but two blows were given by a heavy a split wood and the injuries were inflicted on the vital part of the body, i.e., head. Besides that, admittedly there was no immediate quarrel or sudden provocation by the deceased to the accused and when the medical evidence stands in the manner

already indicated, it cannot be termed as a case of culpable homicide not amounting to murder.

9. No other point is argued before us. For the reasons recorded above, we do not find any merit in this appeal and the same is accordingly dismissed.

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P.K.Tripathy,J.

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Pradip Mohanty, J.

Orissa High Court, Cuttack
October 11, 2006 / ***Samal***